

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

I. Status of the Claims

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier. It is acknowledged that the claim amendments are submitted after final rejection of the claims. However, because the amendments do not introduce new matter, and they either place the application in condition for allowance or at least in better form for consideration on appeal, entry of the amendments is respectfully requested.

Claims 55 and 60 are currently being amended. Support for these claim amendments can be found throughout the specification as-filed. Exemplary support for claim 55 can be found on 5, lines 14-16, page 9, lines 4-6, and original claim 1. Exemplary support for claim 60 can be found on page 9, lines 3-6 and 13-15.

After amending the claims as set forth above, claims 55, 59, and 60 are now pending.

II. Claim Objections

A. Claim 59

The Office Action objects to claim 59 as an allegedly improper dependent claim. According to the Office Action, claim 59 “does not properly fall within the scope of the base claim [55].” Office Action at 2.

Applicants have amended claim 55 so that claim 55 no longer requires “additional amino acids before and after the amino acid sequence H A R L of said peptide.” Thus, claim 59

is a proper dependent claim, because it further limits the scope of claim 55. Accordingly, Applicants respectfully request withdrawal of this ground of objection.

B. Claim 60

The Office Action notes that “claim 55 is limited to peptides not exceeding 25 amino acids in length” and claim 60 “reads on full length NTP.” Office Action at 2.

Applicants have amended claim 60 to make clear that the “isolated peptide” does not exceed 25 amino acids in length. Thus, claim 60 does not encompass full length NTP.

III. Provisional Rejections – Double Patenting

Claims 55 and 59-60 stand “provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11-12 of copending Application No. 10/146,130.” Office Action at 3. According to the Office Action, the cited claims “are not patentably distinct from each other.”

Applicants note the provisional nature of the rejection and will address the rejection when, if ever, it matures into a non-provisional rejection.

IV. Claim Rejections – 35 U.S.C. § 112, First Paragraph

Claim 59 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. According to the Office Action, “[s]upport is not found for the peptide consisting only of [H A R L].” Office Action at 5. Applicants respectfully traverse this ground of rejection.

The specification contains clear and explicit support for a peptide consisting of “the amino acid sequence H A R L.” The Summary of the Invention portion of the specification states that “Harlil peptides encompassed by the invention include ... ‘H A R L.’” Spec. at 5, lines 14-16. The Detailed Description of the specification goes on to state that “[t]he Harlil peptides can also have additional amino acid residues before or after the Harlil sequence on

linker peptides.” Spec. at page 9, lines 4-6. By specifying that the Harlil peptides “can” have additional amino acids, the specification clearly discloses peptides that do not have additional amino acids, *i.e.*, peptides that consist of the Harlil peptides. Finally, the original claims provide written description support for a peptide consisting of H A R L. Specifically, original claim 1 recited: “A peptide having an amino acid sequence selected from the group consisting of” H A R L. While “having” does not exclude additional amino acids, it also does not require them. Thus, claim 1 encompassed a peptide consisting of H A R L. Because both the descriptive portion of the specification and the original claims provide clear and unequivocal support for a peptide consisting of H A R L, claim 60 has written description support.

For at least these reasons, Applicants respectfully request reconsideration and withdrawal of this ground of rejection.

V. Claim Rejections – 35 U.S.C. § 102

Claims 55 and 59-60 stand rejected under 35 U.S.C. § 102(b and e) as allegedly anticipated by U.S. Patent No. 5,830,670 to de la Monte *et al.* According to the Office Action, “de la Monte *et al.* teach isolated neural thread protein and fragments comprising or having the HARL motif, see in particular SEQ ID NO: 120.” Office Action at 5. Applicants respectfully traverse this ground of rejection.

The ‘670 patent cannot anticipate the claimed invention because the ‘670 patent does not teach or suggest a peptide that comprises HARL and “that does not exceed 25 amino acids in length.” Instead, the ‘670 patent discloses a variety of NTP peptides that exceed 25 amino acids in length. For example, the sequence cited by the Office Action, SEQ ID NO: 120, is a sequence of 375 amino acids. Because the ‘670 patent does not disclose a peptide comprising HARL that does not exceed 25 amino acids in length, it cannot anticipate any of the pending claims.

The Office Action appears to suggest that the ‘670 patent anticipates the claims by disclosing generically “fragments” of NTP. However, the ‘670 patent is devoid of any

suggestion that the “fragments” should contain HARL and not exceed 25 amino acids in length. Indeed, the ‘670 patent defines a “fragment” of NTP as “any polypeptide subset of that molecule.” Thus, the ‘670 patent lacks any suggestion that the fragment should be 25 amino acids or less, much less a suggestion that the peptide comprise HARL.

The Office Action also notes that “Monte notes that neural thread protein aggregates and binds to itself, see in particular examples 2-3, 12, 14 and 14-16.” Office Action at 6. The ‘670 patent does not suggest, however, the particular Harlil peptides disclosed by the present application, including the HARL sequence. In fact, the ‘670 patent contains no disclosure to suggest that HARL comprising peptides not exceeding 25 amino acids in length could bind to NTP. Such a teaching could not be extrapolated from the ‘670 patent’s vague disclosure regarding the binding properties of NTP.

For at least these reasons, Applicants respectfully request reconsideration and withdrawal of this ground of rejection.

CONCLUSION

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date Nov 2 2006

By Michele M. Simkin

FOLEY & LARDNER LLP
Washington Harbour
3000 K Street NW, Suite 500
Washington, D.C. 20007-5143
Telephone: (202) 672-5538
Facsimile: (202) 672-5399

Michele M. Simkin
Attorney for Applicants
Registration No. 34,717